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IN THE SUPREME COURT OF THE STATE OF UTAH

19871033

THE STATE OF UTAH, Plaintiff-Respondent v. WILLIAM H. BABBELL, Defendant-Appellant	: : : : : :	Case No. 21033 Category No. 2

BRIEF OF APPELLANT

Appeal from convictions and judgments imposed for two counts of Aggravated Sexual Assault and one count of Aggravated Kidnapping, all felonies of the first degree, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Scott Daniels, Judge, presiding.

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FILED

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Clerk, Supreme Court, Utah

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STATEMENT OF ISSUES

The following issues are presented on appeal:

(1) Did the search and seizure of the Appellant's property violate his Fourth Amendment right to be free from unreasonable search and seizure?

(a) Did the affidavit and the search warrant provide facts sufficient to establish probable cause?

(b) Was the unlawful search and seizure substantial and in bad faith, and did the trial court err in refusing to suppress the evidence seized?

(c) Was the appellant prejudiced by the admission of the illegally seized evidence?

(d) Did the search and seizure violate Article I Section 14 of the Constitution of Utah?

(e) If the warrant stated sufficient facts to find probable cause, did the trial court err in refusing to suppress individual items not listed on the warrant as items to be seized?

(2) Had the illegally seized property been suppressed, would the evidence presented have been sufficient to support a verdict of guilt?

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, Plaintiff-Respondent v. WILLIAM H. BABBELL, Defendant-Appellant	: : : : : :	Case No. 21033 Category No. 2

BRIEF OF APPELLANT

STATEMENT OF THE CASE

The Appellant, William Babbell, appeals from a conviction and judgment imposed for two counts of Aggravated Sexual Assault, felonies of the first degree, in violation of Utah Code Ann. §76-5-405 (1953 as amended), and one count of Aggravated Kidnapping, a felony of the first degree, in violation of Utah Code Ann. §76-5-302 (1953 as amended). Trial was held in Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Scott Daniels, Judge, presiding on October 28-30, 1985. The Appellant was sentenced to two consecutive terms of incarceration, each for from five years to life.

STATEMENT OF FACTS

The Appellant, William Babbell, was convicted of two counts of Aggravated Sexual Assault and one count of Aggravated Kidnapping, all arising from one criminal episode. The evidence at trial established that in the early morning hours of April 18, 1985, Karen Sine (Fletcher), after having a fight with her husband, went to Big Cottonwood Canyon to roast hotdogs and drink beer with three friends

(T. 101-105). After a few hours, at approximately 4:00 a.m. the group was approached by a man who had driven up in a four-wheel-drive pickup truck (T. 106-107). The man told the group that he was a police officer and that they would have to leave the canyon (T. 107-108). He claimed that, because Karen Sine was in the canyon late at night and was under the age of twenty-one without any local identification, he would have to personally escort her out of the canyon (T. 109-110). The man drove her out of the canyon but instead of meeting her friends at the mouth of the canyon, he continued driving and, after stopping at a convenience store, proceeded to a secluded spot in a different canyon where he put a knife to her throat and sexually assaulted her (T. 106-124). A second sexual assault occurred after Ms. Sine was driven to an area near Corner Canyon in southeast Salt Lake County. Ms. Sine was released after several hours (T. 125-126). From Corner Canyon she walked toward Salt Lake City and subsequently called her husband from a convenience store at approximately 8:30 a.m. (T. 182).

The Salt Lake County Sheriff's Department assigned detective Larry Cazier to investigate the offense. Several witnesses and the victim described the four wheel drive truck they had seen as having spotlights and having a stock appearance, without chrome wheels (T. 176, 198-99, 241). The appellant's truck, as evidence by photographs admitted at trial, does not have spotlights (T. 131) and is raised and has chrome wheels (T. 240-241). The color of the truck (brown) and the fact that it does not have

bumpers (a common feature on four wheel drive pick-ups), were the only matching characteristics (Addendum A).

Ms. Sine described her assailant to Detective Cazier as being 5'11" (T. 154), having dark black hair (T. 154), straight bottom teeth (T. 156), and as having no moustache (T. 160). The appellant, William Babbell, is 6'3", has brown hair and a moustache, and a front lower tooth missing (T. 157), that tooth having been missing prior to the assault of Ms. Sine. Mr. Babbell has tatoos on his hand and both upper legs which are large and noticeable (T. 293), but which Ms. Sine had never described her assailant as having (T. 152). Mr. Babbell had these tatoos for a long time preceding trial (T. 293-94).

The defendant presented an alibi defense, based on the time-table of events established by Ms. Sine's testimony. Ms. Sine testified that she went with her friends to a canyon picnic spot at 1:30 a.m. (T. 180). Sometime between 3:30 to 4:00 a.m. her assailant drove up and Ms. Sine was abducted (Id.). Ms. Sine was with her assailant until he left her at 7:00 a.m., at which time she started to walk towards the Salt Lake City area (T. 181). She was certain that the time was 7:00 a.m. because it was light when she started to walk down the canyon (T. 182). Ms. Sine called her husband at 8:30 a.m. (Id.). Florence Babbell, the appellant's mother, testified that on April 17, the evening before the early morning assault of Karen Sine, William Babbell left the house, but returned shortly after midnight (T. 301). After returning home, William drank coffee and talked to his parents who were caring for a

sick baby nephew (T. 302). After chatting for approximately 1 1/2 hours, William went to bed (T. 302). William's truck was in the driveway where he had parked it when Mrs. Babbell woke up the next morning at 6:00 a.m. (T. 302). Mrs. Babbell went out to the camper where William slept and woke him sometime between 6:30 to 7:00 a.m. so that he could drive to his sister's house (T. 303). The defendant argued that he could not have been in the canyon with Karen Sine at 7:00 a.m. because his mother woke him up at home between 6:30 and 7:00 a.m.

Sometime between April 19, 1985 and April 22, 1985, Detective Cazier had a conversation with another detective from the Salt Lake County Sheriff's Office, Virgil Johnson, and was given the name of the defendant whose "description and modus operandi" apparently fit that of Ms. Sine's assailant. A search of motor vehicle records determined defendant did own a truck (T. 37). His address was apparently determined through these records and the first of three visits to the defendant's home on April 22, 1985 was conducted by Cazier and Johnson (T. 33-35). However, despite now having the name of a possible suspect, no photo-spread containing the defendant's picture was shown to the victim or the other three witnesses until April 23, 1985 (T. 50). Thus, there was no corroboration for any of Johnson's statements prior to the visits to defendant's home.

According to the testimony of defendant's mother, Mrs. Florence Babbell, at defendant's Suppression Hearing, two men identifying themselves only as "friends of Bill's" came to her home

on the morning of April 22, 1985 asking for her son William (T. 11-12). When told by Mrs. Babbell her son was not home but was expected later in the day, the men left (T. 12). During a second visit some hours later, the men returned, this time identifying themselves as police officers who told Mrs. Babbell her son had committed the offenses against Ms. Sine and "told me my son was armed and dangerous and that, if necessary, would be shot and questions asked later." (T. 15-16). Detective Cazier, in his testimony, confirmed he recalled some conversation regarding a gun but could recall no specifics (T. 40). The men asked to see the defendant's truck which was parked in the driveway. Mrs. Babbell refused to allow them entry into the truck without showing a warrant. No warrant was produced, but the officers did look into the interior of the truck (T. 39).

Some time after the second visit, Detective Cazier prepared and submitted for issuance to Fifth Circuit Judge Mike Burton a warrant with supporting affidavit. Judge Burton issued the search warrant (Addendum A). At approximately 5:00 p.m. the two deputies as well as other Salt Lake County Sheriff's Department personnel returned to the Babbell residence and searched the camper, house and jeep of Mr. and Mrs. Herbert Babbell as well as defendant William Babbell's truck. A copy of a search warrant along with a list of items seized was left with Tina Jacobson, defendant's sister, who was the only one home at the time the search was conducted (T. 21).

The appellant filed a timely motion to suppress the evidence seized in the search (R. 18-19) (Addendum B). A hearing

was held September 19, 1985 and oral arguments were heard October 8, 1985. The prosecutor stipulated to the suppression of several items seized which were not listed on the warrant nor on the affidavit (T. 69-70). But, defense counsel argued that the warrant and affidavit were facially invalid and, therefore, everything seized should be suppressed (T. 77-75). Judge Daniels denied the motion (R. 38) (Addendum C).

On October 30, 1985, William Babbel was convicted of two counts of aggravated sexual assault and one count of aggravated kidnapping. He was acquitted of one count of aggravated robbery (T. 367).

SUMMARY OF ARGUMENTS

The first argument presented on appeal is that the search and seizure of the Appellant's property violated both his Fourth Amendment rights under the United States Constitution and his Article I Section 12 rights under the Constitution of Utah. Neither the affidavit nor the search warrant stated facts sufficient to establish probable cause for a search. Instead both were vague, general, and relied on the uncorroborated statements of a non-affiant. The search and seizure was substantial and in bad faith, as evidenced by one officer's threats to Appellant's mother and his seizing many items not listed on the face of the warrant or affidavit. The admission of the illegally seized items prejudiced the appellant at trial. If the search and seizure did not violate the Fourth Amendment to the United States Constitution, as restrictively interpreted by the Supreme Court, it violated Article

I Section 14 of the Constitution of Utah. This Court is free to interpret the Utah Constitution as being more protective than the federal constitution. Appellant also contends that the trial court, which suppressed many items seized but not listed on the face of the affidavit, erred in not suppressing all such items.

Finally, the Appellant contends that had the illegally seized evidence been suppressed, the evidence presented would have been insufficient to support a guilty verdict. Given the many significant inconsistencies in the appearance of the Appellant as compared to the victim's descriptions of her assailant, as well as the Appellant's alibi defense, the jury could not have reasonably returned a guilty verdict, had the illegally seized evidence been suppressed.

ARGUMENT

POINT I

THE SEARCH AND SEIZURE OF APPELLANT'S PROPERTY VIOLATED HIS FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE.

The appellant was convicted of the April 18, 1985 aggravated kidnapping and aggravated sexual assault of Karen Sine.

Sometime between April 19, 1985 and April 22, 1985, Detective Cazier had a conversation with another detective from the Salt Lake County Sheriff's Office, Virgil Johnson, and was given the name of the defendant whose "description and modus operandi" apparently fit that of Ms. Sine's assailant. A search of motor vehicle records determined defendant did own a truck. His address was apparently determined through these records and the first of

three visits to the defendant's home on April 22, 1985 was conducted by Cazier and Johnson. However, despite now having the name of a possible suspect, no photo-spread containing the defendant's picture was shown to the victim or the other three witnesses until April 23, 1985. In addition, Cazier admitted at a hearing on defendant's Motion to Suppress that he had personally never seen the defendant nor defendant's truck. Thus, there was no corroboration for any of Johnson's statements despite the lack of corroboration.

Detective Cazier prepared and submitted for issuance to Fifth Circuit Judge Mike Burton a warrant with supporting affidavit. Judge Burton issued the search warrant. At approximately 5:00 p.m. the two deputies as well as other Salt Lake County Sheriff's Department personnel returned to the Babbell residence and searched the camper, house and jeep of Mr. and Mrs. Herbert Babbell as well as defendant William Babbell's truck. A copy of a search warrant along with a list of items seized was left with Tina Jacobson, defendant's sister, who was the only one home at the time the search was conducted (Addendum A).

The Appellant filed a timely motion to suppress the evidence seized in the search. The prosecutor stipulated to the suppression of several items seized which were not listed on the warrant nor on the affidavit of probable cause (T. 69-70). The appellant further argued to the Court that all of the items seized should be suppressed because neither the affidavit nor the search warrant complied with statutory requirements or stated sufficient facts upon which a magistrate could make an independent probable

cause determination (T. 73-75). Judge Daniels ruled against the appellant, refusing to suppress the remaining items (T. 81).

A. BOTH THE AFFIDAVIT AND THE SUBSEQUENT SEARCH WARRANT FAILED TO STATE FACTS SUFFICIENT TO ESTABLISH PROBABLE CAUSE FOR A SEARCH WARRANT.

The Fourth Amendment to the United States Constitution, applicable to the States through the Fourteenth Amendment [Mapp v. Ohio, 367 U.S. 643 (1961)], provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Similarly, Article I, Section 14 of the Constitution of Utah provides:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person or things to be seized.

The United States Supreme Court has elaborated on the importance of a finding of probable cause by an independent, neutral magistrate before issuance of a warrant in several cases. In Nathanson v. United States, 290 U.S. 41 (1933), a warrant was issued upon the sworn allegation that the affiant "has cause to suspect and does believe" that certain merchandise was in a specified location. The Court, noting that the affidavit "went upon a mere affirmation of suspicion and belief without any statement of adequate supporting facts," announced the following rule:

> Under the Fourth Amendment, an officer [of the court] may not properly issue a warrant to search a private dwelling unless he can find probable cause therefore from facts or circumstances presented to him under oath or affirmation. Mere affirmance of belief or suspicion is not enough. Id., at 47.

Similarly, in Giordenello v United States, 357 U.S. 480 (1958), the Supreme Court announced that:

> "the inferences from the facts which lead to the complaint [must] be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime . . . . The purpose of the complaint, then, is to enable the appropriate magistrate to determine whether the probable cause required to support a warrant exists. The Commissioner must judge for himself the persuasiveness of the facts relied on by a complaining officer to show probable cause. He should not accept without question the complainant's mere conclusion."

Id., at 486. Because that warrant stated only conclusions of the affiant and no objective facts, the Giordenello Court overturned the appellant's conviction.

In State v. Harris, 671 P.2d 175, 178 (Utah 1983), this Court reiterated the importance of an independent probable cause decision by a neutral magistrate, stating:

> The intervention of a neutral magistrate not only guarantees a lawful search of a suspected offender, but in a larger sense it protects society against the erosion of those cherished rights that are still not taken for granted in many parts of the world. Courts do not enforce these procedural requirements to sanction the activities of one single individual, but to assure all citizens those continuing fundamental rights.

The United States Supreme Court stated in Aguilar v. Texas, 378 U.S. 108, 111 (1964):

> Although the reviewing court will pay substantial deference to judicial determinations of probable cause, the court must still insist that the magistrate perform his "neutral and detached" function and not serve merely as a rubber stamp for the police.

Regarding the information which must be contained in an affidavit, the court stated:

> [T]he magistrate must be informed of some of the underlying circumstances from which the informant concluded that the [seizable items] were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the information . . . was credible or his information reliable. Id., at 114-15.

Aguilar, combined with the later case of Spinelli v. United States, 394 U.S. 410 (1969), established a two-prong test to determine the adequacy of information contained in an affidavit. Under the Aguilar-Spinelli standard, the magistrate must be apprised of the following:

(1) The underlying facts or circumstances from which the affiant could conclude that the informant was reliable or his information credible; and

(2) The underlying facts or circumstances from which the informant concluded that criminal activity was being carried on, or the goods to be seized are where they are purported to be.

In Illinois v. Gates, 462 U.S. 213 (1983), the Supreme Court held that strict compliance with the Aguilar-Spinelli standard is not absolutely required so long as the "totality of the circumstances" demonstrate probable cause. Yet this Court, as well as many other courts, continues to recognize the Aguilar-Spinelli

standard as an important guideline concerning issues of probable cause. In State v. Bailey, 675 P.2d 1203, 1205 (Utah 1984), this Court stated:

> [E]ven under [the totality of the circumstances] standard, compliance with the Aguilar-Spinelli guidelines may be necessary to make a sufficient basis for probable cause. Depending on the circumstances, a showing of the basis of knowledge and veracity or reliability of the person providing the information for a warrant may well be necessary to establish with a "fair probability" that the evidence sought actually exists and can be found where the informant states.

The Utah requirements for search warrants are listed in Utah Code Ann. §77-23-2 and 3 (1953 as amended):

> 77-23-2. **Grounds for issuance.** Property or evidence may be seized pursuant to a search warrant if there is probable cause to believe that it:
>
> (1) Was unalwfully acquired or is unlawfully possessed;
>
> (2) Has been used or is possessed for the purpose of being used to commit or conceal the commission of an offense; or
>
> (3) Is evidence of illegal conduct.
>
> 77-23-3. **Conditions precedent to issuance.** (1) A search warrant shall not issue except upon probable cause supported by oath or affirmation particularly describing the person or place to be searched and the person, property or evidence to be seized.

In the present case, the Appellant, William Babbell, contends that neither the search warrant nor the affidavit in support of the search warrant complied with the Aguilar-Spinelli guideline or the Utah statute and that, under the totality of the circumstances, neither the warrant nor the affidavit provided

sufficient probable cause to search Mr. Babbell's residence. In granting the search warrant without an adequate statement of probable cause, Judge Burton failed to carry out his responsibilities as an independent and neutral magistrate as required by §77-23-1 (1953 as amended).

The only paragraph in the "Affidavit for Search Warrant" (Addendum A) attested to by Detective Cazier and presented to Judge Burton that could be construed as linking William Babbell to the crimes alleged was based on unsupported information from a third person, not the affiant and stated:

> Based on the modus operadi of the suspect and the description of the suspect, Detective Virgil Johnson, Salt Lake County Sheriff's Office, believed the vehicle may belong to William Babbell. The detectives drove by the address of the suspect, 8558 South 3830 West, and noticed a truck in the driveway that matched the description. The suspect's mother, a resident at the address, gave the detectives permission to look at the truck.

This clause is woefully inadequate to enable a neutral magistrate to find probable cause. It states merely that a truck similar to that described by witnesses was in the driveway of Mr. Babbell's residence. No other facts implicating Mr. Babbell are given.

The affidavit vaguely alludes to a third person's (Officer Virgil Johnson) knowledge of Mr. Babbell's "modus operadi" [sic], but does not give any foundational information for such knowledge. It does not state when, if at all, officer Johnson had past experience with Mr. Babbell. Even more basically, the affidavit fails to provide any information that Mr. Babbell had ever done any similar acts in the past from which to establish a "modus

operandi." Clearly the statement with respect to Johnson's knowledge is vague, uncorroborated and lacking in even the most basic foundational facts necessary to enable a judge to make an objective and detached assessment of probable cause. Such vague and uncorroborated assertions based on mere conclusions of an officer were clearly condemned by the Supreme Court in Whitely v. Warden, 401 U.S. 560 (1971).

The affidavit does not say how the truck matched earlier descriptions nor more importantly, the ways in which the truck did not match earlier descriptions. In fact, witnesses described the truck they had seen as having spotlights, and having a stock appearance, without chrome wheels. Ms. Sine reported that the windshield was cracked (T. 198-99, 241, 176). The Appellant's truck did not have spotlights, and it was raised with chrome wheels. No evidence of defendant's truck having a cracked windshield was introduced at trial. The color of the truck and the fact that it did not have bumpers (a common feature of four wheel drive pickups) were the only matching characteristics that could be listed in the affidavit.

A magistrate could not substantiate this statement given the facts provided in the affidavit.

In conclusion, no facts or circumstances justifying suspicion of Mr. Babbell were presented in the affidavit for the warrant. If Judge Burton was justified in granting the warrant to search Mr. Babbell's residence based on the facts provided in the affidavit, he would have been justified in issuing a warrant to

search any particular residence with a brown four wheel drive pick-up truck in the driveway. The warrant was not particularized. It amounted to little more than a "general" warrant -- forbidden by the Fourth Amendment. Without foundational facts, the inconclusive statement that officer Johnson recognized the "modus operandi" of Mr. Babbell completely lacked substantiation and served as no credible, reliable information. The judge could not have made a neutral, independent probable cause finding based on the facts provided to him.

B. THE UNLAWFUL SEARCH AND SEIZURE WAS SUBSTANTIAL AND IN BAD FAITH, AND THEREFORE THE COURT ERRED IN REFUSING TO SUPPRESS THE EVIDENCE SO SEIZED.

In Mapp v. Ohio, 367 U.S. 643 (1961), the United States Supreme Court held that the federal exclusionary rule announced in Weeks v. United States, 232 U.S. 383 (1914), also applied to state criminal proceedings. The Court stated:

> Today we . . . close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. We hold that all evidence obtained by searches and seizures in violation of the constitution is, by that same authority, inadmissible in a state court. (Emphasis added).

Mapp v. Ohio, 367 U.S. at 654-55. In so holding, the Court not only recognized the deterent value of the exclusionary rule, but it also emphasized the importance in maintaining judicial integrity, stating:

> The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to

> observe its own laws, or worse, its disregard of the charter of its own existence . . . . As Mr. Justice Brandeis said . . . "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example . . . . If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law into himself; it invites anarchy." (Citations omitted).

Mapp, 367 U.S. at 659.

Under the exclusionary rule, illegally seized evidence cannot be directly or indirectly used in a criminal trial against the victim of the illegal serach. Walder v. United States, 347 U.S. 62 (1954), Wong Son v. United States, 347 U.S. 485 (1963). In United States v. Houtin, 566 F.2d 1027 (Fifth Cir. 1978), the court summarized:

> Although excluded evidence often times is quite reliable and "the most probative information bearing on the guilt or innocence of the defendant," the [exclusionary] rule's prohibition applies to direct evidence as well as to 'fruit of the poinsonous tree' --secondary evidence derived from the illegally seized evidence itself.

In the recent case of United States v. Leon, 468 U.S. ____, 82 L. Ed. 2d 677 (1984), the United States Supreme Court opened, on a limited basis, the judicial door which it had sought to close in Mapp, supra. Relying entirely on the deterence justification for the exclusionary rule, and ignoring the judicial integrity justification, the court held that the Fourth Amendment exclusionary rule does not bar the prosecutor's use of evidence obtained by officers acting in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. But the Court was careful to emphasize that:

> Suppression . . . remains an appropriate remedy if the magistrate or judge in issuing a warrant was mislead by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth. The exception we recognize today will also not apply in cases where the issuing magistrate wholly abandoned his judicial role . . . . Nor would an officer manifest objective good faith in relying on a warrant based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." Finally, depending on the circumstances of the particular case, a warrant may be so facially deficient . . . that the executing officers cannot reasonably presume it to be valid.

Leon, 82 L.Ed. 2d at 698-99. In so stating, the Supreme Court emphasized that unreasonable actions by the police in obtaining the search warrant are grounds for suppressing the evidence.

In 1982, the Utah State Legislature established its own "good faith" exception to the exclusionary rule. Utah Code Ann. §77-23-12 states:

> **Evidence seized pursuant to warrant not excluded unless unlawful search or seizure substantial -- "Substantial" defined.** Pursuant to the standards described in section 77-35-12(g) property or evidence seized pursuant to a search warrant shall not be suppressed at a motion, trial, or other proceeding unless the unlawful conduct of the peace officer is shown to be substantial. Any unlawful search or seizure shall be considered substantial and in bad faith if the warrant was obtained with malicious purpose and without probable cause or was executed maliciously and wilfully beyond the authority of the warrant or with unnecessary severity.

In the present case the Appellant, William Babbell, contends that the evidence presented at the suppression hearing demonstrates Officer Cazier's bad faith and maliciousness in procurring the

warrant, which was fatally lacking in probable cause (Point A, above). Therefore, the trial court erred in refusing to suppress all of the evidence obtained pursuant to the search warrant.

Mr. Babbell's mother, Mrs. Florence Babbell, testified at the suppression hearing that, on the morning of April 22, 1985, two men, identifying themselves only as "friends of Bill's," came to her home asking for her son William (T. 11-12). She had never seen these men before. Mrs. Babbell told them that Bill was not home and she did not know when he would return (T. 12). They then left (T. 13). The men never told Mrs. Babbell that they were police officers, nor why they wanted to talk to Bill. A few hours later both men returned, identified themselves as police officers, and showed Mrs. Babbell an arrest warrant they had for Mr. Babbell. Mrs. Babbell testified:

> I told him [Officer Larry Cazier] I read it. I said, "I want to read it," and I read the arrest warrant. And he [Officer Cazier] said, "He's armed and he's dangerous," and he said, "If I see him, I'll shoot and I'll ask questions later." And I said, "This is my son you're talking about." And he said, "Well, that's the way it is." (T. 15-16)

Detective Cazier testified that he recalled some conversation regarding a gun, but could not recall the specifics (T. 39-40). He said he indicated to Mrs. Babbell that they considered William to be a "forcible fellow" and that force in his apprehension would be justified (T. 40). Officer Cazier testified that he and his partner, on this second visit to Mr. Babbell's residence then looked into the defendant's pick-up truck without a warrant, after obtaining the "consent" of Mrs. Babbell (T. 39).

Only after this second visit to the Babbell residence did Officer Crazier prepare and submit a search warrant and supporting affidavit to Fifth Circuit Court Judge Mike Burton. Judge Burton issued the search warrant. At approximately 5:00 p.m. the two deputies, as well as other sheriff's department personnel, returned to the Babbell residence and searched the camper, house, and jeep of Mr. and Mrs. Babbell, as well as the appellant's truck (T. 55). A copy of the search warrant along with a list of items seized was left with Tina Jacobson, the Appellant's sister, who was the only one home at the time the search was conducted (Addendum A).

These facts, leading up to the subsequent search, demonstrate the capriciousness and bad faith of Officers Cazier and Virgil Johnson. Officer Cazier could not view the interior of William Babbell's truck from the street. The first two visits he had no warrant, nor did he have probable cause to secure one. Cazier entered the Babbell property without permission using the pretense that he was a friend of William Babbell. When told William Babbell was not at home, Cazier left. He later returned to the Babbell home, again without benefit of a warrant or probable cause to secure one. This second time Cazier identified himself as a police officer and proceeded to intimidate the elderly Mrs. Babbell, telling her that her son would be shot on sight and questions asked later. After this intimidation, Mrs. Babbell gave the officer permission to look into the Appellant's truck. Officer Cazier then inspected the interior of the truck, although he did not enter the truck. These strong-arm tactics by officer Cazier were utterly

unacceptable conduct for a police officer and demonstrate objective bad faith. Only after terrorizing Mrs. Babbell into involuntarily granting the officer permission to look into the truck was officer Cazier able to secure a search warrant.

Officer Cazier's bad faith was also evidenced by his search of the Babbell residence. The affidavit and search warrant listed six items to be seized (Addendum A). Of these six items, only two items matching the general descriptions listed were seized. But Officer Cazier seized an additional fourteen items not listed on the warrant (Addendum A). Several of these items were supressed at trial, but at least two prejudicial non-listed items were not suppressed, a red flashlight and a "55 mph sucks" button (T. 42). Neither item was described in police reports as having been reported by Ms. Sine as belonging to her assailant. This large scale, knowing violation of the limits of the search warrant demonstrated, again, Officer Cazier's bad faith.

In conclusion, the type of police misconduct exhibited in this case is precisely that which the exclusionary rule is meant to deter. The evidence should have been suppressed since it was obtained in bad faith.

C. THE ADMISSION OF ILLEGALLY SEIZED EVIDENCE VIOLATED ARTICLE I SECTION 14 OF THE CONSTITUTION OF UTAH.

The Appellant, William Babbell, contends that even if the search and seizure of his residence and family vehicles did not violate the Fourth Amendment to the United States Constitution, it did violate Article I Section 14 of the Constitution of Utah. There

have been recurring reminders in recent cases that this Court remains free to interpret the Utah Constitutional requirements regarding search and seizure and to impose higher standards on searches and seizures under the Utah Constitution than are required by the federal constitution. (See, for example, State v. Hygh, 711 P.2d 264 (Utah 1985) (Zimmerman, dissenting) and State v. Earl, 30 Utah Adv. Rep. 3 (March 21, 1986).

A state is free, as a matter of its own law, to impose greater restrictions on police activity than those which the United States Supreme Court has held are necessary under federal constitutional standards. Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980), Oregon v. Hass, 420 U.S. 714 (1975); Brennan, State Consitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489 (1977). An increasing member of state courts are analyzing state constitutional search and seizure provisions to expand constitutional protection beyond those mandated by the Fourth Amendment, often directly avoiding United States Supreme Court precedent. See, for example, State v. Caraher, 293 Or. 741, 653 P.2d 942, 947 (Or. 1982) and cases cited therein. Not only have state courts made independent decisions in the first instance, sometimes they have declined to follow the United States Supreme Court's analysis on remand after that Court reversed the state court's fourth amendment analysis, as did South Dakota in the remand of South Dakota v. Opperman, 428 U.S. 364 (1976) and Massachusetts in the remand of Massachusetts v. Shepard, 468 U.S. ____, 82 L.Ed. 2d 737 (1984), the comparison case of Leon, supra.

The United States Supreme Court has held that suppression at trial of illegally seized evidence is constitutionally mandated:

> We hold that all evidence obtained by searches and seizures in violation of the constitution is, by that same authority, inadmissible in a state court.

Mapp v. Ohio, 367 U.S. 643, 655 (1961). That court also mandated a two prong analysis for determining the sufficiency of a probable cause statement in the Aguilar-Spinelli line of cases. However, the Burger Court, under the doctrine of "new federalism", has rolled back many federal Fourth Amendment protections established in the earlier Warren Court. In Leon, supra, the Burger court, ignoring the judicial integrity justification for the exclusionary rule which is so vital in Mapp, held that deterence of inappropriate conduct of police officials was the sole reason for the exclusionary rule. Therefore, only knowing violations of the Fourth Amendment by police officers would be grounds to exclude evidence. In so holding, the Leon court went against the express wording of Mapp, finding that suppression is not a constitutionally based remedy. Similarly, the Burger Court retracted protections established by the Warren Court when it substituted its vague concept of probable cause "under the totality of the circumstances", a standard without any guidelines whatsoever, for the Warren Court's Aguilar-Spinelli test of probable cause, in Illinois v. Gates, supra. The effect of the "good faith" exception to the exclusionary rule and the "totality of the circumstances" standard for probable cause is to impose an almost insurmountable burden on an Appellant to demonstrate that probable cause was lacking and, if he manages to meet that burden, to

demonstrate that an officer acted in bad faith and therefore the evidence should be excluded. The Burger Court has, in effect, highly limited the Fourth Amendment as a viable remedy for Appellants who have suffered what would have been, 15 years ago, a clear cut violation of the Fourth Amendment.

In the present case the Appellant respectfully requests that this Court adopt the articulate and well-reasoned approaches of Aguilar-Spinelli and the two prong standard for probable cause statements announced therein, for purposes of Article I Section 14 of the Constitution of Utah. Similarly, the appellant requests that this Court follow the United States Supreme Court in Mapp, supra, in holding that, once a violation of Article I Section 14 is established, the Utah Constitution requires that the tainted evidence be excluded from evidence without a showing of "bad faith" on the part of the police officers involved. In so stating, this Court would let the public know that Utah courts will not be a party to, and take advantage of, illegally seized evidence. The result of such a rule can only be a more thorough and accurate investigation by police and a more careful examination of warrant requests by magistrates. In so holding, this Court would join the growing ranks of state supreme courts which offer greater constitutional protection under state constitutions than the Burger Court chooses to allow under the Federal Constitution. See the voluminous citations in State v. Caraher, supra.

The appellant concludes that, following the Aguilar-Spinelli two prong standard of probable cause, the warrant

and affidavit were constitutionally deficient of probable cause (See Point I A, above). Therefore, the search and seizure violated Article I Section 14 of the Constitution of Utah. Because Utah courts should not be tarnished by becoming a party to illegally seized evidence, the Constitution of Utah should require suppression of such illegally seized evidence, as the Federal Constitution once did.

D. ALTERNATIVELY, IF THE WARRANT STATED FACTS SUFFICIENT TO SHOW PROBABLE CAUSE, THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS INDIVIDUAL ITEMS NOT LISTED ON THE WARRANT.

In this case the trial court refused to find the search warrant facially invalid, rejecting the Appellant's argument that the warrant lacked facts sufficient to show probable cause (T. 81). But the affidavit and search warrant listed only six items to be seized (Addendum A). Officer Cazier, in addition seizing two of the six items listed, also seized fourteen items not listed on the warrant nor affidavit as items to be seized (Addendum A, T. 69-70). The trial court suppressed many of these items before trial, but two prejudicial non-listed items were not suppressed, a red flashlight and a "55 mph sucks" button (T. 42). Neither item was described in police reports as having been reported by the victim as belonging to her assailant (T. 42-43). The appellant contends that the trial court erred in refusing to suppress these two items which were not listed as items to be seized.

Both the Fourth Amendment to the United States Constitution and Article I Section 14 of the Constitution of Utah require that a warrant contain an oath or affirmation "particularly describing the

place to be searched and the person or things to be seized." The United States Supreme Court, in Marron v. United States, 275 U.S. 192 (1927), explained, "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another." The Marron court emphasized two important purposes underlying the particularity requirement: preventing general searches; and preventing the seizure of objects upon the mistaken assumption that they fall within authorization granted by the magistrate in the warrant. A third purpose of the particularity requirement is to prevent "the issuance of warrants on loose, vague, or doubtful bases of fact." Bo-Bart Importing Co. v. United States, 282 U.S. 344 (1931).

An exception to the requirement that seized items be listed on the warrant is the plain view doctrine, which this Court addressed in State v. Gallegos, 712 P.2d 207 (Ut. 1985). In Gallegos, this Court held that property which is not facially illegal (in that case, a video-cassette recorder) cannot be first seized and then investigated. The investigation should come before the seizure, and therefore the item should be listed as an item to be seized in the warrant. But where there was investigation and probable cause before the seizure and the item is inadvertently left off the warrant, the searching officer may seize the item if the officer sees it at a time when he is where he has a legal right to be. Id. at 209.

In the present case, Officer Cazier seized a "55 mph sucks" and a red flashlight, neither of which were listed as items to be seized. Neither of these items appeared in any police report as being reported by the victim as belonging to her assailant (T. 42-43). The "55 mph sucks" button was mentioned briefly in the affidavit's factual statement, but it is not listed as an item to be seized. Given the fact that Officer Cazier looked into the Appellant's truck before obtaining a warrant to search the truck, the button should not have been allowed under the plain view doctrine. Clearly, the affidavit's mention of the button is possibly not a product of prior investigation, but instead the result of intimidating Mrs. Babbell into letting him look into the truck (see part B, supra).

Both the red flashlight and the "55 mph sucks" button should have been suppressed because they were not listed on the warrant as items to be seized. They were seized in a sweeping search which went well beyond the limitations set forth in the warrant. Furthermore, several other items were seized during the search which were not listed on the warrant (T. 69-70). However, prior to trial the prosecutor in the case stipulated to the suppression of all of those items on the very grounds now advanced -- that the officers seized items not listed in the warrant (T. 69-70). Clearly, if some non-listed items warranted suppression, then all non-listed items warranted suppression. Once the prosecutor stipulated to the partial suppression, the trial court should have ordered a total suppression of all non-listed items. To do otherwise defies logic.

E. THE ADMISSION OF ANY ILLEGALLY SEIZED EVIDENCE WAS PREJUDICIAL TO THE APPELLANT.

The appellant sought to exclude all material seized in the illegal search based on insufficient probable cause for the search. The trial court excluded only certain items, because those items were not listed as items to be seized in the search warrant, but rejected Appellant's probable cause argument. The Appellant contends that the trial court's error in refusing to suppress all evidence seized was prejudicial to the appellant at trial.

In State v. Pierre, 572 P.2d 1338 (Utah 1977), this Court stressed that it may reverse a conviction when the trial court erred in admitting evidence, and the error is such that:

> there exists a reasonable probability or likelihood that there would have been a result more favorable to the defendant in absence of the error.

Id. at 1352. See also State v. Wells, 603 P.2d 310 (Utah 1979) and cases cited therein.

The appellant's conviction was based on two aspects of the State's case: (1) the victim's identification of William Babbell, and (2) the evidence seized from the Babbell residence and vehicles. Had the latter been suppressed, there would have been a reasonable likelihood of a result more favorable to Mr. Babbell.

The victim's description of her assailant was, in several significant ways, inconsistent with Mr. Babbell's appearance. She had described her assailant as being 5'11" (T. 154), having dark black hair (T. 154), straight bottom teeth (T. 156), having no moustache (T. 160), and having normal strength and movement in his

right arm (T. 177). But Mr. Babbell is 6'3" (T. 288), has sandy brown hair and a moustache, has a front lower tooth missing (T. 157), and has very limited strength and movement in his right arm due to an industrial accident (T. 285). (For an extended discussion of these inconsistencies, see Point II).

The State's case was further weakened by the Appellant's alibi defense. The victim testified that her assailant released her and she began walking out of the canyon at about 7:00 a.m., (T. 182). The appellant's mother, Florence Babbell, testified that William's truck was in the driveway at 6:00 a.m. when she awoke (T. 302). She woke William, who was sleeping in his bed, sometime between 6:30 and 7:00 a.m. (T. 303).

Given these weaknesses in the state's case (for further elaboration, see Point II), there can be no doubt that the case was made significantly stronger by the admission into evidence of the "55 mph sucks" button and the knife which was identified as the assault weapon. In Appellant's Point II it is argued that had these items been suppressed, there would have been insufficient evidence to base a verdict of guilt. But even if this Court does not agree with that position it cannot reasonably be argued that the Appellant was not prejudiced by the improper admissions of the seized items. Therefore, had the illegally seized items been suppressed, a reasonable likelihood exists that a more favorable result would have been reached.

POINT II

HAD THE ILLEGALLY SEIZED PROPERTY BEEN SUPPRESSED, THE EVIDENCE PRESENTED WOULD HAVE BEEN INSUFFICIENT TO SUPPORT THE GUILTY VERDICT.

A reviewing court has the authority to review a case on the sufficiency of the evidence. In State v. Petree, 659 P.2d 442, 444 (Utah 1983), this Court stated, ". . . notwithstanding the presumptions in favor of the jury's decision this Court still has the right to review the sufficiency of the evidence to support the verdict." This Court then stated the standard to be applied:

> We reverse a jury conviction for insufficient evidence only when the evidence [viewed in the light most favorable to the verdict] is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted. Id.

William Babbell's convictions were based principally on two aspects of the state's case: (1) the victim's identification of William Babbell, and (2) the evidence seized illegally from the Babbell residence and vehicles. Mr. Babbell contends that had the illegally seized evidence been excluded (Point I) the evidence presented would have been insufficient to sustain a guilty verdict.

Had the seized evidence been excluded, the State's case would have rested on the strength of the victim's identification of William Babbell. However, the victim's description of the assailant was, at best, of very questionable accuracy. Therefore, had the illegally seized evidence been excluded, the State's case would have been significantly weakened.

The victim testified that her assailant was 5'11" (T. 154), had dark black hair (T. 154), straight bottom teeth (T. 156), and had no moustache (T. 160). But the appellant, William Babbell, is 6'3" (T. 288), has sandy brown hair and a moustache, and has a front lower tooth missing (T. 157). Furthermore, Mr. Babbell has tatoos on his hand and both upper legs which are large and noticeable (T. 293), but which were never described by the victim, even though she had repeated opportunities to notice these peculiarities. Yet she never identified her assailant, before or at trial, has having any unusual tatoos.

The victim further described her assailant as being strong, with no noticeable weakness in either arm (T. 177). But Dr. Robert Hansen, the Babbell family doctor, testified that Mr. Babbell had suffered a recurrent dislocation of his shoulder in an industrial accident five years earlier (T. 282-283), resulting in a nerve injury to the brachial plexus, the nerves running from the neck to the arm. The consequence of this injury, as well as a February, 1985 injury to Mr. Babbell was that Mr. Babbell suffered from stiffness of the right hand, as well as persistent weakenss and limitation of movement in his right arm and shoulder (T. 285). Dr. Hansen had referred Mr. Babbell to a neurosurgeon and neurologist for possible rehabilitative surgery (Id.). Yet, despite the fact that the victim testified that her assailant used force on her, she testified that she did not notice any lack of strength in his right hand or arm, and she did not notice any injury to her assailant's hand (T. 177).

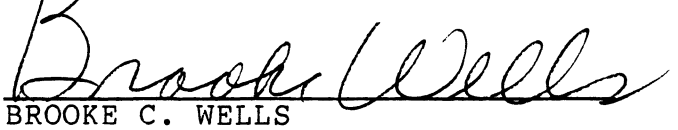
Further adding to the weakness of the victim's identification of Mr. Babbell was Mr. Babbell's alibi defense. The victim testified that her assailant released her at approximately 7:00 a.m. (T. 181). She was certain of the time because dawn was commencing (T. 182). But Florence Babbell, the appellant's mother, testified that William Babbell's truck was parked in the driveway when she woke up at 6:00 a.m. (T. 302). She woke the appellant sometime between 6:30 and 7:00 so that he could help his sister jump-start her car (T. 303).

Certainly the jury's function is to access credibility, and in so doing, the jury may disregard alibi testimony. However, if the illegally seized evidence had been suppressed as it should have been, the jury could not have reasonably disregarded the extensive inconsistencies between the victim's description of her assailant and Mr. Babbell's appearance. Had the seized evidence been suppressed, no reasonable juror could have found Mr. Babbell guilty beyond a reasonable doubt given the remaining evidence presented.

CONCLUSION

For any or all of the foregoing reasons, Appellant William Babbell seeks reversal of his convictions and remand of his case to the District Court with an order for either dismissal of the charges or a new trial.

RESPECTFULLY SUBMITTED this 15 day of April, 1986.



BROOKE C. WELLS
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I delivered _____ copies of the foregoing to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Uth this ___ day of April, 1986.

Brooke Wells

BROOKE C. WELLS
Attorney for Appellant

DELIVERED by _____ this ___ day of April, 1986.

ADDENDUM A

IN THE FIFTH CIRCUIT COURT,

IN AND FOR THE SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH)
): ss
County of Salt Lake)

AFFIDAVIT FOR SEARCH WARRANT

BEFORE: Micheal Burton
JUDGE ADDRESS

The undersigned affiant being first duly sworn, deposes and says:

That he has reason to believe

That (X) in the vehicle(s) described as 1971 Chevrolet pickup truck, License #MK3127, dark brown in color
(X) on the premises known as 8558 South 3830 West with a white camper located in the driveway; and the house at the same address, a white and brown mobile home which is not presently mobile

In the City of West Jordan, County of Salt Lake, State of Utah, there is now certain property or evidence described as:

1. Small revolver, snub-nose type
2. Hunting knife, with approximately 6" blade
3. Wondra Lotion
4. Large black flashlight
5. Wallet, maroon in color, velcro fastner, containing credit cards and identification of Karen Sine
6. Clothing consisting of white short-sleeved O.P. Brand T-shirt, blue baseball cap

and that said property or evidence:

(X) was unlawfully acquired or is unlawfully possessed;
(X) consists of an item or constitutes evidence of illegal conduct, possessed by a party to the illegal conduct;

Affiant believes the property and evidence described above is evidence of the crime(s) of Aggravated Sexual Assault, Aggravated Kidnapping, Aggravated Robbery.

The facts to establish the grounds for issuance of a Search Warrant are:

Your affiant, Detective Larry Cazier, Salt Lake County Sheriff's Office, has been employed by the Sheriff's Office for thirteen years and has been assigned to the Sex Crimes Unit for two years, and bases this request for a search warrant upon the following:

1) A statement by Karen Sine that on April 18, 1985, at about 5:00 a.m. she was in Millcreek Canyon with 3 other individuals when she was approached by a person who identified himself as a narcotics officer and asked her to come with him. Once inside his vehicle, she was taken to a different location where she was sexually assaulted and was deprived of her wallet by the suspect.

Karen Sine described the interior of the vehicle as having orange seat covers, a cracked windshielf, beverage holders on the dashboard, a "55 mph sucks" button on the driver's side visor, and a cassette player in the dashboard.

The 3 other individuals who saw the victim leave with the suspect, Lisa Jenkins, Jack Moyer, and Alfonso Ulibarri, describe the truck as a older model Chevrolet 4-wheel drive pick-up, dark brown in color, with no front or rear bumpers.

Based on the modus operadi of the suspect and the description of the suspect, Det. Virgil Johnson, Salt Lake County Sheriff's Office, believed the vehicle may belong to William Babbel. The detectives drove by the address of the suspect, 8558 South 3830 West, and noticed a truck in the driveway that matched the description. The suspect's mother, a resident at the address, gave the detectives permission to look at the truck.

The suspect's mother stated that the suspect resides both in the camper located in the driveway and inside the residence previously described.

The victim, Karen Sine, reports that during sex acts forced upon her by the suspect, he used Wondra lotion, which he obtained from the glove box. She also described a 6" hunting knife, and a small revolver, the both of which suspect placed behind the seat of the pickup truck. She further described his clothing as being a white short-sleeved O.P. brand T-Shirt and as him having wore a blue baseball cap. She also stated the suspect deprived her of her maroon wallet, with a velcro fastener, containing her identification and credit cards. The suspect used a large black police-type flashlight during the commission of the offenses.

WHEREFORE, the affiant prays that a Search Warrant be issued for the seizure of said items:

(X) in the day time.

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME this 22 day of April, 1985.

JUDGE
IN THE FIFTH CIRCUIT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE [illegible] - CIRCUIT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SEARCH WARRANT

No. _____

COUNTY OF SALT LAKE, STATE OF UTAH

To any peace officer in the State of Utah.

Proof by Affidavit under oath having been made this day before me b
Officer Larry Cazier, I am satisfied that there is probable cause t
believe

That (X) in the vehicle(s) described as 1971 Chevrolet pickup truck, License #MK3127, dark brown in color
(X) on the premises known as 8558 South 3830 West with white camper located in the driveway; and the house a the same address, a white and brown mobile home whic is not presently mobile

In the City of West Jordan, County of Salt Lake, State of Utah there is now certain property or evidence described as:

1. Small revolver, snub-nose type
2. Hunting knife, with approximately 6" blade
3. Wondra Lotion
4. Large black flashlight
5. Wallet, maroon in color, velcro fastner, containing credit card and identification of Karen Sine
6. Clothing consisting of white short-sleeved O.P. Brand T-shirt blue baseball cap

and that said property or evidence:

(X) was unlawfully acquired or is unlawfully possessed;
(X) consists of an item or constitutes evidence of illega conduct, possessed by a party to the illegal conduct;

You are therefore commanded:

(X) in the day time

to make a search of the above-named or described person(s vehicle(s), and premises for the herein-above described property

evidence and if you find the same or any part thereof, to bring it forthwith before me at the Fifth Circuit Court, County of Salt Lake, State of Utah, or retain such property in your custody, subject to the order of this court.

GIVEN UNDER MY HAND and dated this 22 day of April, 1985.

Michael K. Burton

JUDGE
OF THE FIFTH CIRCUIT COURT

1 1 red flashlight

2 3 knives

3. 1 button "55 MPH Sucks"

4. Pkg. Marlboro cigarettes

5. 2 hats.

6. 2 - 38 cal. bullets.

7. 2 spotlights

8. 1 cooler (6 pkg. variety)

9. 2 pr cowboy boots

10. 1 OP T-shirt.

4/22/85

Larry McLaze

ADDENDUM B

BROOKE C. WELLS (#3421)
Salt Lake Legal Defender Assoc.
Attorney for Defendant
333 South Second East
Salt Lake City, Utah 84111
Telephone: 532-5444

AUG 19 1985
H. Dixon Hindley, Clerk 3rd Dist. Court
By _____ Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH, Plaintiff v. WILLIAM BABBELL, Defendant	: : : : : : 	MOTION TO SUPPRESS EVIDENCE ILLEGALLY SIEZED AND NOTICE OF HEARING Case Nos. CR-85-843 and CR-85-844 JUDGE SCOTT DANIELS

COMES NOW the defendant, WILLIAM BABBELL, by and through his counsel of record, BROOKE C. WELLS, and moves for an order suppressing all evidence seized as a result of a search or searches executed at 8558 South 3830 West, West Jordan, Utah and precluding introduction of such evidence at defendant's trial.

Evidence seized at this address was taken in violation of defendant's state and federal constitutional rights.

DATED this 17 day of August, 1985.

Brooke Wells
BROOKE C. WELLS
Attorney for Defendant

000013

NOTICE OF HEARING

TO THE COUNTY ATTORNEY AND THE CLERK OF THE COURT:

You and each of you please take notice that the above entitled matter will come on regularly for hearing on the 19th day of September 1985 at the hour of 9:00 a.m. before the Honorable Scott Daniels. Please govern yourselves accordingly.

DATED this 19 day of August, 1985.

Brooke Wells

DELIVERED a copy of the foregoing to the County Attorney's Office, 231 East Fourth South, Salt Lake City, Utah, this 19 day of August, 1985.

Paul Spiers

ADDENDUM C

TITLE: (✓ PARTIES PRESENT) | COUNSEL: (✓ COUNSEL PRESENT)

State of Utah : T. Vuyk -

vs. :

William Babbel - JAIL - : B. Wells -

K. Busel — CLERK

S. Sprouse — REPORTER

T. Foster — BAILIFF

HON. Scott Daniels — JUDG

DATE: Oct 8, 1985

This case comes on now regularly before the Court for further hearing on the motion to suppress.

Based upon the arguments of respective counsel, Court orders the following:

1) the motion to suppress is granted as to the razor, spotlight, Book, Rawstick, Bullets;

2) the motion to suppress is denied as to the flashlight, T-shirt, knives, Baseball caps;

3) the motion to suppress is taken under advisement as to the "55 mph sucks" Button.